location of the said vehicle and the place. (b) It is not dated. (c) There is a lack of particulars," the court finds it frivolous and of no substance whatsoever.

As to paragraph 7 of the same affidavit *viz.* "(a) An infant cannot sue in law except by the authority and consent of his next friend. (b) There is no evidence that the next friend, if any, before the Writ was filed, consented to act as such. (c) Under the provisions of the Rules of the High Court, 1957, the plaintiff has failed to file: (i) Consent of next friend to act as such; and (ii) Affidavit of solicitor of no adverse interest," it also lacks merit.

O.16 r.20 of our Rules of the Supreme Court reads as follows: —

"Before the name of any person shall be used in any action as next friend of any infant, or other party, or as relator, such person shall sign a consent to act as such next friend and such consent shall be filed."

It is not in *pari materia* with O.16 r.20 of the Rules of the Supreme Court of England, the difference being that while our section speaks of a signing a "consent" the English section refers to "written authority to the solicitor."

The purpose of our O.16 r.20 is to ensure that no person who has not agreed that his name can be used as next friend has his name so used. In this case an affidavit was filed with the writ by the next friend stating that he was the father of the said infant and a fit and proper person to be appointed next friend and that he had no adverse interest to that of the said infant. So when the writ was filed the next friend had agreed to be appointed next friend and I consider that if there was an irregularity in form it could be cured under O.70. In fact another consent by the next friend in conventional form was filed on August 24, 1973 even before the Memorandum of Appearance was filed. In the case of *Attorney-General at & by the relation of Pesurohjaya Ibu Kota, Kuala Lumpur* v. *Wan Kam Fong and Others*,[1] Justice Raja Azlan held that "in order to give validity to the use of the relator's name in an action his prior written consent to act as such must be filed at or before issue of the writ. Such consent is a condition precedent to the right to use the relator's name; it goes to the root of the matter for without it the nominal plaintiff has no *locus standi*." With that proposition I agree. But in that case there was no indication whatsoever when the writ was filed that the plaintiff had a right to use the relator's name. However in this case the affidavit filed with the writ indicated that the next friend agreed to be appointed the next friend for the purposes of the writ. Hence on the facts the instant case can be distinguished from the case cited.

Another ground for complaint by the defendant was that the consent of the next friend was not served on the defendant. Here again there is no merit as there is no mandatory provision that the consent must be served on the defendant.

A further complaint was that the affidavit purported to be the consent of the next friend was sworn before the writ was filed and reliance was placed on the case of *H. Stacey* v. *Diamond Metal Products Co. Ltd. & Anor.*[2] In that case application was made to use an affidavit of a deponent sworn before the filing of the writ as evidence and the court held it was inadmissible as the deponent was dead and was not available for cross-examination. In the present case the affidavit is not evidence for the purposes of the trial but merely as a consent for the next friend's name to be used. As long as it is filed with the writ the provision of the law must be deemed to be complied with.

For the above reasons, the summons is dismissed with costs.

It might be pertinent here to make a few observations about applications to strike out writs. The object of the Rules of the Supreme Court in making provisions for the striking out of writs is to save the time of the court in processing and proceeding with actions which are frivolous vexatious and show no cause of action or in other words writs without any merit whatsoever. The purpose of the rules is not to enable defendants to come to court and waste the court's time by complaining the "i"s are not dotted or the "t"s crossed in the hope of making a few paltry pennies in costs. It is equally not intended for parties to cause a prolixity of writs especially at a time when the court is so overburdened with writs that there is a huge backlog of cases. Order 70 specially seeks to prevent frivolous applications to set aside writs. In this case even if the court saw fit to strike out the writ the plaintiffs will file another writ on the same facts with the same cause of action and it is not the duty of the court to cause or encourage prolixity of writs. In fact courts should seriously consider when such unsuccessful applications to strike out writs are concerned, whether the solicitors responsible should be personally liable to pay costs.

Application dismissed.

Solicitors: *Triptipal Singh & Co.; Allen & Gledhill.*

ONG TUA CHOR v. LEE BENG TONG

[A.C.J. (Ajaib Singh J.) September 18, 1975]
[Seremban — Civil Appeal No. 3 of 1975]

Landlord and Tenant — Respondent landlord claims vacant possession of shophouse — Rent-controlled premises — Appellant erected illegal partition at front portion of the ground floor exposing respondent to a penalty — Breach of the provisions of the building by-laws under the Town Enactment (F.M.S. Cap. 137) — Whether in breach of Control of Rent Act, 1966, s. 16(1)(k).

Control of Rent Act — Complaint made by respondent to Town Council resulting in appellant's prosecution — Whether ground under s. 16(1)(k) of the Control of Rent Act is available to respondent.

Evidence — Whether record of conviction is admissible in evidence in civil proceedings — Plea of guilty admissible if relevant to the matter in issue.

The respondent in this case claimed for vacant possession of a two-storey shophouse from the appellant tenant on the ground that the appellant as tenant had contravened the provisions of section 16(1)(k) of the Control of Rent Act 1966. The appellant had erected an illegal partition on the premises in contravention of the building by-laws, and as a result of a complaint lodged by the respondent to the Town Council in respect of the unauthorised partition, the appellant was prosecuted and convicted on his plea of guilty in the lower court. The learned magistrate gave judgment for the respondent and ordered the appellant to give vacant possession of the premises

to the respondent. Counsel for the appellant contended that since the respondent himself had initiated the prosecution he could not rely on the ground that the tenant had exposed him to conviction. He also submitted that records of criminal proceedings were inadmissible in civil actions.

Held: (1) the fact that the appellant was prosecuted because of the complaint made to the Town Council by the respondent was immaterial and could not affect the right of the respondent to avail himself of the ground afforded to him under section 16(1)(k) of the Control of Rent Act in recovering possession of the demised premises;

(2) a conviction obtained against a person in criminal proceedings is inadmissible in evidence in civil proceedings but a plea of guilty being an admission is admissible if it is relevant to the matter in issue;

(3) the appeal must be dismissed with costs.

Cases referred to:-

(1) *Cheam See Loo Brothers* v. *Kong Yoon Choy & Anor.* [1973] 2 M.L.J. 13.

(2) *Hooi Chuk Kwong* v. *Lim Saw Choo* [1958] M.L.J. 5.

(3) *She Eng Gek* v. *D.A. De Silva* [1957] M.L.J. 55.

CIVIL APPEAL.

A. K. J. D'Cruz for the appellant.

Seah Choon Chye for the respondent.

Ajaib Singh J.: This is an appeal from the decision of the learned magistrate ordering the appellant to give vacant possession of a two-storey shophouse on the ground that the appellant as the tenant of the respondent landlord had contravened the provisions of section 16(1)(k) of the Control of Rent Act 1966. The respondent based his claim for possession of the premises on two grounds. First, that the appellant having sublet part of the premises received in respect of the subletting rents which including the apportioned rental or value of the part of the premises retained by the appellant exceeded in the aggregate by more than ten per centum the rent of the whole premises contrary to section 16(1)(j) of the Control of Rent Act. Secondly, that the appellant committed a breach of the provisions of the building by-laws made under the Town Board Enactment (Cap. 137) by partitioning the front portion of the ground floor illegally and thereby exposed the respondent to a penalty or fine under the Enactment within the meaning of section 16(1)(k) of the Control of Rent Act. However in the course of the hearing in the lower court the respondent abandoned the first ground and proceeded to prove his case only in respect of the second ground. In her amended statement of defence the appellant admitted being the tenant of the respondent paying rent at the rate of $90 per month but denied that she was in breach of section 16(1)(j) and (k) of the Control of Rent Act. With regard to section 16(1)(k) of the Act she alleged that the partition was erected by her with the oral consent of the respondent.

In his evidence in the lower court the respondent said that some time in February 1971 he went to the premises and saw that the appellant had partitioned the ground floor of the premises. He then instructed his solicitors to serve the appellant with a notice to quit which was done by letter dated February 23, 1971 and he also instructed his solicitors to lodge a complaint with the Town Council in respect of the unauthorised partition. In due course the Town Council prosecuted the appellant in the magistrate's court for having constructed a plywood partition on the premises in contravention of the building by-laws. The appellant pleaded guilty and she was fined $80. The respondent produced a certified true copy of the charge and the notes recorded by the learned magistrate and he said that he had not given any consent for the erection of the partition in respect of which the appellant was fined. In cross-examination the respondent admitted that the Town Council took action against the appellant as a result of his complaint but no action was taken against him. He denied that he had agreed to the erection of the partition and denied that he had asked for an increase of rent from $90 to $160. That was the case for the respondent. The appellant chose not to offer any evidence and her counsel Mr. A. K. J. D'Cruz elected to make a submission of no case to answer. After hearing the submissions of counsel for the appellant and for the respondent the learned magistrate reserved his judgment for about six weeks and then ordered the appellant to give vacant possession of the premises to the respondent.

On appeal before me Mr. D'Cruz repeated the submissions that he had made in the lower court. First, that in order to succeed in his claim the respondent had to establish not only the likelihood of prosecution by the Town Council but also certainty of prosecution and conviction and that if the landlord himself initiated the prosecution he could not rely on the ground that the tenant had exposed him to conviction. In support of this proposition Mr. D'Cruz cited the case of *Cheam See Loo Brothers* v. *Kong Yoon Choy & Anor.*[1] Secondly, that the respondent had to prove that the appellant had knowingly contravened the building by-laws and thirdly, that the learned magistrate had wrongly exercised his discretion in favour of the respondent under section 16(1)(k) of the Control of Rent Act 1966. In addition Mr. D'Cruz raised a new point which he had not taken up in the lower court. He said that the record of the conviction against the appellant had been wrongfully admitted in evidence. He submitted that records of criminal proceedings were inadmissible in civil actions and in the absence of any evidence that the appellant had contravened any building by-law the respondent had failed to prove his case against the appellant and therefore the appellant had no case to answer.

After perusing the record in this appeal and after considering the submissions advanced on behalf of the parties I have come to the conclusion that the appeal must fail. There can be no doubt that by erecting the illegal partition the appellant had exposed the respondent to a fine because the contravention of the building by-laws made the respondent as the owner of the premises guilty thereof no less than his tenant the appellant who had put up the illegal partition. The appellant was convicted and fined under section 92(i)(c) of the Town Boards Enactment for having contravened the building by-laws by putting up the partition on the ground floor of the premises and the respondent became liable himself under section 93(ii) of the Enactment which states that —

"Where any building operations are commenced or carried out in respect of any building they shall be deemed to have been commenced or carried out by the owner of the holding whereon such building is erected, and he shall be liable therefor."

The fact that the appellant was prosecuted because of the complaint made to the Town Council by the respondent was quite immaterial and could not affect the right of the respondent to avail himself of the ground afforded to him under section 16(1)(k) of the Control of Rent Act in recovering possession of the demised premises. The facts in the case of *Cheam See Loo Brothers, supra*, were quite different from those in the present case before me. In that case the Town Council had received a complaint from the respondents alleging that the appellants had committed a breach of the building by-laws by erecting a corrugated iron roof over the kitchen area of the demised premises. The Town Council replied saying that the Council did not propose to take any action on the complaint with the result that the appellants were never prosecuted for the alleged breach of any building by-law. The Federal Court held following the decision in the case of *Hooi Chuk Kwong* v. *Lim Saw Choo*[2] that for a claim to succeed under section 16(1)(k) of the Control of Rent Act exposure to prosecution was not enough. There must be exposure to conviction and there could be no exposure to conviction unless facts existed which would support a conviction. In delivering the judgment of the court Ong C.J. said: —

"... In the instant case the Raub Town Council had decided in 1969 not to prosecute because they were of opinion that there was no breach of the building by-law. Such being the undisputed facts — and no prosecution having arisen during the three subsequent years — the respondents clearly could not in 1972 maintain that they were 'exposed' to any penalty, fine or forfeiture. The appellants therefore were protected tenants because paragraph (k) was not available to the landlords as a ground for recovering possession. Even had the Town Council acted wrongly in deciding not to prosecute, it was well within their powers so to act because section 18 of the Town Boards Enactment (Cap. 137) gave the Chairman an absolute discretion to compound offences and the Town Council cannot by mandamus be ordered to prosecute."

With regard to the submission that the record of the conviction against the appellant was inadmissible I agree that a conviction obtained against a person in criminal proceedings is inadmissible in evidence in civil proceedings but a plea of guilty being an admission is certainly admissible if it is relevant to the matter in issue as was the case in the present appeal. (See the case of *She Eng Gek* v. *D. A. De Silva*[3]).

On the point raised by Mr. D'Cruz that the respondent had to prove that the appellant had knowingly contravened the building by-laws I must say that there is nothing in the by-laws nor in section 16(1)(k) of the Control of Rent Act which made it necessary to prove that at the time when she put up the plywood partition the appellant knew that she was committing a breach of the building by-laws of the Town Council. All that was required to prove and which was amply proved in this case was that the appellant erected the partition on the ground floor of the premises, that the erection of the partition whether the appellant knew it or not constituted a breach of the building by-laws and that it exposed the appellant to a fine.

It now remains to be considered whether in making the order for the recovery of the premises in favour of the appellant the learned magistrate had exercised his discretion under section 16(1)(k) of the Control of Rent Act in a fair and just manner. As I have stated earlier the learned magistrate reserved his decision for about six weeks and it may be assumed that he did so in order to deliberate upon the evidence in the case and to give a considered judgment. The appellant had chosen not to call any evidence on her behalf and the magistrate could therefore only go by the evidence adduced by the respondent. In his grounds of judgment the learned magistrate said that there were no inherent improbabilities in the evidence of the respondent and he would therefore accept it. In the event he found for the respondent and ordered the appellant to vacate the premises within three months. In all the circumstances of this case I do not think that the learned magistrate acted unreasonably in ordering the appellant to give possession of the premises to the respondent. By remaining silent the appellant was not helping her own cause. As a result there were hardly any mitigating circumstances or other relevant considerations before the court which could have been taken in favour of the appellant.

The appeal is accordingly dismissed with costs.

Appeal dismissed.

Solicitors: *A. K. J. D'Cruz & Co.; Seah Choon Chye.*

PUBLIC PROSECUTOR v. SOON TIEW CHOON

[A.Cr.J. (Hashim Yeop A. Sani J.) September 19, 1975]
[Ipoh — Criminal Appeal No. 109 of 1974]

Criminal Law and Procedure — Charge of making a false statement — Plea of guilty — Contents of charge inconsistent with brief facts — Magistrate rejecting plea and acquitting accused — Evidence must be heard first before magistrate can acquit — Criminal Procedure Code (F.M.S. Cap. 6), s. 173(g).

The respondent in this case pleaded guilty to a charge of knowingly making a false statement in answer to a question in a form in respect of an application to have her son registered as a citizen, an offence punishable under section 16(1) of Part III of the Second Schedule to the Constitution. It was found that the question referred to in the brief facts seemed different from the question in the specified charge and the learned magistrate rejected the respondent's plea and acquitted her when the prosecution failed to clarify a number of points relating to the charge.

Held: it was not open to the magistrate to acquit without hearing the evidence and therefore the acquittal must be set aside and the prosecution be given liberty to re-summon the respondent or to reframe the charge as they think fit.

Case referred to:-

(1) *Public Prosecutor* v. *Mahmud* [1974] 1 M.L.J. 85.

CRIMINAL APPEAL.

Wan Abdul Majid bin Wan Hamid (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Hashim Yeop A. Sani J. (delivering oral judgment): The respondent was charged before the magistrate for knowingly making a false statement in an answer to a question in a form in respect of an application to have her son registered as a citizen, an offence punishable under section 16(1)(a) in Part III of the Second Schedule to the Constitution. The respondent pleaded guilty and the brief facts were given by the prosecuting officer.